IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1843 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SANTOKBEN GANPATBHAI MARWADI & 7 - Appellant(s)
Versus
RAMESHCHANDRA BHOGILAL MODI & 1 - Defendant(s)

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Appearance :

MS.NISHA M THAKOR for MR KF DALAL for Appellant(s) : 1 - 5, 8,DELETED for Appellant(s) : 6 - 7.
NOTICE SERVED for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 03/07/2007

ORAL JUDGMENT

1. Ms. Nisha M. Thakor, learned counsel under the authority of Shri K.F. Dalal for the appellants;

none for the respondents though served.

2. The claimants, being partially aggrieved by the award dated 19.11.86 passed by the M.A.C.Tribunal-II [Main] Ahmedabad City in M.A.C.Petition No. 81/86, is before this Court, seeking enhancement to the tune of Rs. 3.00 lacs.

3. Ms. Thakor, learned counsel for the appellant, after taking me through the evidence of the witnesses available at exhs. 14,15 and 16 submitted that the income of the deceased could safely be assessed at Rs. 150/- and the prospective income should also have been assessed. According to her, the Tribunal was not justified in holding that the income of the deceased could hardly be Rs. 600/- per month and dependency of the family would be Rs. 400/-. She submits that the Tribunal did not properly appreciate the evidence, specially the evidence of Santokben Ganpatbhai Marwadi, widow of the deceased and erred in holding that the income of the deceased was Rs.70-80 per day.

4. As none appears for the other side and it is

not brought to the notice of the Court that the other side have challenged their liability and responsibility either by filing Cross Objections or Cross Appeal, I am not required to enter into the said facts.

5. After going through the statements of Santokben, which are at exh. 14, I must immediately hold that she did not say that income of her husband was Rs. 70-80 a day. In fact, what she stated was that her husband was giving Rs.70-80 a day which would only mean that the respondent after deducting his personal expenses was giving the family a sum of Rs. 70-80 a day. Out of that amount, she was required to spend a sum of Rs. 40-50 per day towards feeding of the camel. Out of the amount of Rs. 80/- if I deduct a sum of Rs. 50/- or out of the sum of Rs. 70/- if I deduct a sum of Rs. 40/-, I must hold that the family was getting Rs. 30/- per day and not a sum of Rs. 20/- a day. After deduction of camel feeding, the Tribunal came to a conclusion that the income of the deceased would have been Rs. 20/- per day and therefore, income of the

deceased would have been Rs. 600/-. Out of the said amount, the Tribunal had deducted a sum of Rs. 200/- towards personal expenses of the deceased. In the opinion of this Court, approach of the Tribunal was patently illegal. Even from the statement of the widow of the deceased, it would clearly appear that the family was saving a sum of Rs. 30/- per day which would mean that monthly income of the deceased could be Rs. 900/- per month. If out of the said amount, 1/3rd personal expenses are deducted, family dependency would be Rs. 600/- per month or Rs. 7200/- per year. Adopting multiplier of 15, I must hold that the family would be entitled to a sum of Rs. 1,08,000/- towards loss of future financial benefits. The Tribunal erred in awarding a sum of Rs. 72000/- under the said head. Instead of Rs. 72000/-, the appellant would be entitled to a sum of Rs. 1,08,000/-, that is, a sum of Rs. 36,000/- in addition to what has been awarded to the claimants.

6. Taking into consideration the totality of the circumstances and the admissions made by he

widow of the deceased, I hold that the family would be entitled to additional amount of Rs. 36,000/-. The respondent would be obliged to pay the amount to the claimants with interest at the rate of 9% per annum from the date of the claim petition till recovery. The appeal is allowed to the extent indicated above. No costs.

[R.S. GARG, J.]

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